

TASK FORCE FINAL RECOMMENDATIONS

RECOMMENDATION 1 (unanimous vote):

Maintain civil service protections against political influence in the selection of qualified state classified employees and for existing merit employees; redefine mission statement (KRS 18A.010(1)) to include strong and clear directive; clarify prohibitions against political discrimination within KRS 18A.140(1).

ACTION REQUIRED: Statutory change to amend to KRS 18A.010(1) to include the directives of KRS 18A.140(1).

RECOMMENDATION 7 (Vote: No – 3; Absent – 3; Yes – 14):

KRS 18A.990, the penalty section of the civil service law, should be amended to apply to the traditionally criminal acts set out in KRS 18A.145 and 18A.140(1). Administrative acts within KRS 18A.005 through 18A.200, but not with including KRS 18A.140, should be decriminalized.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 2 (Vote: No – 3; Absent – 4; Yes – 13):

Adoption of the proposals contained within the “Proposed Future Hiring Processes” (attached hereto and made a part hereof) from the Personnel Cabinet dated September 2005, with the exception of the need for a clarification of the proposal under “C – Register” concerning “eliminating registers for career path promotions and promotions”. Additionally, recommends maintaining an employee promotion system that provides career path opportunities through families of job classes based on merit, experience, excellent performance and evaluation. This provides for the capability for internal promotions without requiring external competition. This change will actually enhance the ability of a classified employee to promote within the existing system. A need exists for promulgation of a comprehensive Personnel Board regulation that defines process, procedure, and implementation. (101 KAR 1:400 merely reiterates the statutory requirements without any guidance for agency implementation). “Seniority” as defined in KRS 18A.005(35) for an internal promotion shall not be a controlling factor.

ACTION REQUIRED: Statutory and Regulatory changes

RECOMMENDATION 3 (unanimous vote):

Increase efforts for recruiting and hiring qualified veterans, minorities, women, and disabled.

ACTION REQUIRED: Statutory changes

RECOMMENDATION 8 (Vote No – 1; Absent – 4; Yes – 15):

As presently enacted, KRS 18A.040 requires that "... rules, regulations and practices meeting merit system standards shall, where such standards apply as a prerequisite for federal grants-in-aid, be in effect continuously, notwithstanding any other provision of KRS 18A.005 to 18A.200. "The federal guidelines are set forth in 41 CFR 60 at pages 121-148. As stated, the purpose of the guidelines is to "incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin." The guidelines' focus is upon the procedures prospective employers utilize in making employment decisions regarding all aspects of the employment relationship. A procedure which has an adverse impact upon the employment relationship of any protected class is deemed discriminatory and in violation of the federal regulations.

This statutory attempt to ensure compliance with federal regulation creates potential conflicts with regard to selection and affirmative action. Changes to selection procedures of employees must be in compliance with federal guidelines set forth in 41 CFR 60. While it is not mandated, federal regulations allow for the establishment of voluntary affirmative action programs. After reviewing KRS 18A, it is apparent that if the Commonwealth utilizes a person's race, religion, sex or national origin as a factor in selecting an employee, it would be in violation of state law as currently written. Therefore, the current statutes should be amended to clearly permit an affirmative action program.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATION 20 (unanimous vote):

Conduct a disparity study of Executive Branch employees to determine if there is a disparity between the qualified work force of Kentucky citizens in protected classes, and Executive Branch employees in protected classes. The study should break down the numbers for each job category. [Implementation would require the Personnel Cabinet to request appropriate funding through the budgetary process.]

ACTION REQUIRED: Executive Branch Action

RECOMMENDATION 21 (unanimous vote):

Update the State Affirmative Action Plan consistent with federal requirements and industry best practices. The updated Affirmative Action Plan should provide tools to state agencies to assist them with reaching affirmative action goals established in the plan. The updated Affirmative Action Plan should contain provisions for accountability of agencies in the form of penalties for those agencies that do not make progress toward affirmative action goals and rewards for those agencies that make progress toward affirmative action goals.

ACTION REQUIRED: Executive Order and Statutory Change

RECOMMENDATION 22 (unanimous vote):

Require mandatory training regarding diversity and the updated Affirmative Action Plan to managers and other individuals making hiring decisions. The training should include emphasis on ways to reach affirmative action goals and established accountability provisions.

ACTION REQUIRED: Executive Order

RECOMMENDATION 4 (unanimous vote):

Request Personnel Cabinet to study the feasibility of establishing a comprehensive regulation for implementing procedures regarding background checks, including but not limited to NCIC checks, and employment references for all executive branch applicants. The task force supports legislation to appropriate funds which would allow the Personnel Cabinet to conduct background checks on future employees

ACTION REQUIRED: Personnel Cabinet study and possible statutory and regulatory changes.

RECOMMENDATION 5 (unanimous vote):

Establish a process of ongoing review of the merit system and make recommendations regarding the merit system including a comprehensive review and update of KRS 18A and KAR 101. The review and update should be focused on providing definitions for terms used throughout KRS 18A and KAR 101. The review and update should also clarify any inconsistencies in the law including vague language subject to differing interpretation. The update should make the law governing the merit system user friendly and understandable and include a review of previous recommendations that have not been implemented. After the initial review and update, there should be an annual review and report.

ACTION REQUIRED: Policy Change

RECOMMENDATION 6 (unanimous vote):

It is recommended that “burrowing,” the act of switching from a non-merit position to a merit position late in an administration to get special merit protections, be limited by statute for those without reversion rights under 18A.005 by increasing the probation period to one year. Therefore it is recommended that:

- (1) Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.
- (2) An employee who satisfactorily completes the initial probationary period for the position to which he was initially appointed to the classified service shall be granted status and may not be demoted, disciplined, dismissed, or otherwise penalized, except as provided by the provisions of this chapter.
- (3) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.
- (4) An employee with status, who has been promoted, shall serve a promotional probationary period of six (6) months, except for those employees granted leave in excess of twenty (20) consecutive work days during this period. Such probationary periods shall be extended as prescribed in KRS 18A.005. During this period, he shall retain the rights and privileges granted by the provisions of this chapter to status employees.
- (5) An employee with status may request that he be reverted to a position in his former class at any time during the promotional probationary period.
- (6) A laid-off employee who accepts a bona fide written offer of appointment to a position shall not be required to serve an initial probationary period. He shall be an employee with status and shall have all rights and privileges granted employees with status under the provisions of this chapter.
- (7) A former unclassified employee under the provisions of paragraphs (d), (e), (f), (g), (h) and (i) of KRS 18A.115 shall serve an initial probationary period of twelve (12) months if the employee is appointed to a position in the classified service unless that employee had previously had status in the classified service or had been separated from

his or her previous unclassified position for at least one hundred and eighty (180) days prior to the effective date of his or her appointment to the classified service.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 9 (unanimous vote):

Since both the Personnel Cabinet and the Personnel Board have the authority to promulgate regulations with regard to personnel matters, topic areas that are under the purview of each should be clarified and distinguished.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATIONS 10 & 14 Combined (unanimous vote):

Adopt procedures to encourage resolution of personnel issues at the agency level prior to going before the Personnel Board. Make a progression of options available for merit employees to address work-related complaints or disciplinary actions. At the beginning of the process, the employee may choose between filing a grievance, or requesting mediation where the agency is required to participate. If mediation is unsuccessful, or the grievance procedures fail to address the employee's concerns to his satisfaction, the employee may have his concern heard by a peer review committee (to be established according to Personnel Cabinet guidelines). If the peer review committee action fails to address the employee's concerns to his satisfaction, the employee may appeal the decision of the peer review committee to the Personnel Board.

Require the Personnel Board to monitor all grievances and mediations filed. This additional duty, along with information showing that the Personnel Board is under funded in its implementation of existing statutory duties, makes it necessary to recommend that the Personnel Board be properly funded to perform all of its duties, both old and new.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATION 11 (unanimous vote):

The reporting requirements in KRS 18A.030 should be reviewed for relevance and usefulness in providing meaningful oversight.

ACTION REQUIRED: Statutory Change

RECOMMENDATIONS 12 and 15 (combined – unanimous vote):

Final written decisions of the Personnel Board should be made available for review electronically, organized by the statutory basis for appeal.

ACTION REQUIRED: Change in Personnel Board Practice

Require the Personnel Board members to be subject to the model code of ethics (attached hereto and made a part hereof), and require the Board to report annually to the State Government Committee. In their annual report, the Board should address the following:

- a. the number of merit state employees at the beginning and end of the reporting period;
- b. the number of grievances filed and mediation requests made by merit employees during the reporting period;
- c. a tabulation of the types of grievances filed during the reporting period – suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- d. a tabulation of the types of mediation requests filed during the reporting period -- suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- e. a comparison of the number of grievances and mediations filed by merit employees in previous reporting periods, including a comparison in the categories listed above;
- f. a tabulation of the stages in which employee complaints were resolved during the reporting period;
- g. the average amount of time taken to resolve employee complaints during the reporting period, by stage;
- h. a comparison of the amount of time taken to resolve employee complaints during the reporting period, by stage, and the amount of time taken during the previous reporting periods.

RECOMMENDATION 13 (unanimous vote):

The following technical changes to KRS 18A should be made:

- Change “commissioner” to “secretary” in 18A.037 and 18A.040. These are apparent oversights from reorganization legislation.
- Update the citation in 18A.043 for the Federal Drug Free work place to read "41 USCA § 707 et seq."

ACTION REQUIRED: Statutory Change

RECOMMENDATION 16 (unanimous vote):

Allow agencies to place employees on paid leave during the interim between issuance of an intent to dismiss letter and the effective date of the agency’s final action.

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 17 (Vote: No – 7; Absent – 5; Yes – 8):

Explore the need and feasibility of implementing a drug testing program for Executive Branch employees to include post offer/pre-employment drug testing, reasonable suspicion drug/alcohol testing, and random drug/alcohol testing.

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 18 (unanimous vote):

Amend KRS 61.394 to enhance state employee paid military leave benefit to a maximum of twenty-one (21) calendar days from the current maximum of fifteen (15) calendar days. Allow any unused days in a federal fiscal year to be carried over to the following year. [Adding an additional week of paid leave and allowing service members to roll over unused weeks to the following year would enhance current benefits in parity with those benefits enjoyed by civil service employees in the federal government.]

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 19 (unanimous vote):

Adopt one state leave request form for KRS 18A employees that would cover all types of leave: annual, sick, Family and Medical Leave, compensatory, military, voting, special, adverse weather, and blood donation. [This modification will allow a uniform approach to employee leave, and align the leave request form with the uniform state timesheets already in use.]

ACTION REQUIRED: Regulatory Change

RECOMMENDATION 23 (unanimous vote):

Seek a reduction in the number of classifications of between 40 and 60 percent.

- Currently there are 1,657 classifications and 708 of them have no more than five employees.
- There are 200 inactive classifications.
- Many classifications are specific to one cabinet and should be broader.

ACTION REQUIRED: Administrative

RECOMMENDATION 24 (unanimous vote):

Maintain an annual increment in conjunction with the establishment of a minimum, mid and maximum pay grade for each salary. Employees who are employed prior to the effective date of this legislation shall be exempt from maximum salaries.

- Pursue a current market survey and anticipate annual adjustments to the minimum, mid and maximum pay grades.
- When maximum salary conflicts with annual increment, consider alternate methods to award annual increments, for example lump sum payments.
- Further evaluate use of ACE and ERA awards.
- Consider impact of the establishment of maximum salary on long-term, senior employees to ensure they are not inadvertently hurt as they approach retirement.

ACTION REQUIRED: Legislative Consideration, Administrative

RECOMMENDATION 25 (unanimous vote):

Train supervisors for employee evaluation.

- Study, and as appropriate, use the evaluation process as a compensation for performance standard.
- Possibly use of outside consultant for selection of best practice methods.

ACTION REQUIRED: Administrative

RECOMMENDATION 26 (unanimous vote):

Encourage agencies to explore implementation of an optional 40-hour work week. Compensate employees for additional time.

ACTION REQUIRED: Legislative Consideration, Administrative

RECOMMENDATION 27 (unanimous vote):

Amend KRS 18A.140 to read as follows:

18A.140: Prohibition against discrimination and political activities.

(1) No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious

opinions or affiliations or ethnic origin or sex or disability. No person over the age of forty (40) shall be discriminated against because of age.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.

(3) No employee in the classified service or member of the board or its executive director or secretary shall, directly or indirectly, pay or promise to pay any assessment for political purposes, or solicit or take any part in soliciting for any political party, or solicit or take any part in soliciting any political assessment, subscription, contribution, or service. No person shall solicit any political assessment, subscription, contribution, or service of any employee in the classified service.

(4) No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any *partisan* public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. Officers or employees of the classified service may be candidates for and occupy *an elective office* ~~[a town or school district office if the office is one for which no compensation, other than a per diem payment, is]~~ provided *that* ~~[and]~~ the election is on a nonpartisan basis, *the officers or employees have complied with the requirements of KRS 61.080, and the duties of the elective office do not interfere with or create any conflicts of interest with the state duties of the officer or employee in the classified service. Furthermore, the employee must give notice to his or her agency of the his or her intent to run for elective office upon said employee filing with the appropriate entity.*